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UNITED STATES DISTRICT COURT  
DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

v.

KANAWAY SEAFOODS, INC.,  
d/b/a Alaska General Seafoods,

Defendant.

No.

**COMPLAINT**

(Clean Water Act, 33 U.S.C. §§ 1251, et  
seq.)

The United States of America, by authority of the Attorney General of the United States and through the undersigned attorneys, acting at the request of the Administrator of the United States Environmental Protection Agency ("EPA"), files this Complaint and alleges as follows:

## **I. NATURE OF ACTION**

1. This is a civil action brought pursuant to Sections 309(b) and (d) of the Federal Water Pollution Control Act, as amended by the Clean Water Act of 1977 and the Water Quality Act of 1987 (“CWA”), 33 U.S.C. §§ 1319(b) and (d), against Kanaway Seafoods, Inc. d/b/a Alaska General Seafoods (“AGS” or “Defendant”) for civil penalties and injunctive relief. The claims arise from AGS’s unauthorized and illegal discharges of pollutants into Tongass Narrows from its seafood processing facility in Ketchikan, Alaska, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a).

## **II. JURISDICTION AND VENUE**

2. This Court has original jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1345 because this is a civil action commenced by the United States that arises under the laws of the United States and pursuant to 28 U.S.C. § 1355 because this is an action in part for the recovery of a penalty incurred under an act of Congress.

3. Venue is proper in this district pursuant to 28 U.S.C. § 1391(b) because the events or omissions giving rise to the claims herein occurred in this district and pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b), because the Defendant is doing business in this district.

## **III. PARTIES**

4. Plaintiff is the United States of America. Authority to bring this action is vested in the Attorney General by 28 U.S.C. §§ 516 and 519, and Sections 309 and 506 of the Act, 33 U.S.C. §§ 1319 and 1366.

5. Defendant is a Delaware corporation that has owned and operated shore-based seafood processing facilities located at 980 Stedman St., in Ketchikan, Alaska (the “Ketchikan Facility”) at all times relevant to this lawsuit.

6. Notice of the commencement of this action has been given to the State of Alaska pursuant to Section 309(b) of the Act, 33 U.S.C. § 1319(b).

#### **IV. STATUTORY AND REGULATORY BACKGROUND**

7. Section 301(a) of the Act, 33 U.S.C. § 1311(a), makes unlawful the discharge of any pollutant by any person except in compliance with, *inter alia*, a National Pollutant Discharge Elimination System ("NPDES") permit issued pursuant to Section 402 of the Act, 33 U.S.C. § 1342.

8. Section 502(12) of the Act, 33 U.S.C. § 1362(12), defines "discharge of a pollutant" to mean "any addition of any pollutant to navigable waters from any point source" or "any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other floating craft."

9. Section 502(6) of the Act, 33 U.S.C. § 1362(6), defines "pollutant" to include solid waste, biological materials, and industrial waste.

10. Section 502(7) of the Act, 33 U.S.C. § 1362(7), defines "navigable waters" to mean "the waters of the United States, including the territorial seas."

11. Section 502(14) of the Act, 33 U.S.C. § 1362(14), defines the term "point source" to include "any discernible, confined and discrete conveyance, including but not limited to any pipe ... conduit ... [or] container ... from which pollutants are or may be discharged."

12. Section 502(5) of the Act, 33 U.S.C. § 1362(5), defines "person" to include corporations.

13. Pursuant to Section 402(a) of the Act, 33 U.S.C. § 1342(a), the Administrator of the EPA may issue NPDES permits which authorize the discharge of pollutants into waters of the United States, subject to the conditions and limitations set forth in such permits.

14. Section 309(b) of the Act, 33 U.S.C. § 1319(b), authorizes the Administrator of the EPA to commence a civil action for appropriate relief, including a permanent or temporary injunction, against any person who violates Section 301 of the Act.

15. On June 21, 1995, the EPA issued General NPDES Permit No. AK-G52-0002 for Seafood Processors in Alaska ("General Permit"). The Permit became effective on August 4, 1995 and was to expire at midnight on August 4, 2000. Beginning on April 4, 1996, AGS was authorized to discharge in accordance with the terms of the General Permit certain pollutants, including seafood processing wastes, from the Ketchikan Facility to Tongass Narrows through its outfalls. Pursuant to the provisions of the General Permit and EPA regulations appearing in 40 C.F.R. Part 122, AGS's authorization to discharge certain pollutants to Tongass Narrows through the Ketchikan Outfalls in accordance with the terms of the General Permit remained in effect after August 4, 2000 at all times relevant to the claims appearing herein.

#### **V. GENERAL ALLEGATIONS**

17. AGS is a "person" within the meaning of Section 502(5) of the Act, 33 U.S.C. § 1362(5).

18. Tongass Narrows constitutes "waters of the United States" within the meaning of Section 502(7) of the Act, 33 U.S.C. § 1362(7).

19. Seafood processing wastes and other wastewaters are "pollutants" within the meaning of Section 502(6) of the Act, 33 U.S.C. § 1362(6).

20. The Outfalls are each a "point source" within the meaning of Section 502(14) of the Act, 33 U.S.C. § 1362(14).

## **VI. CLAIMS FOR RELIEF**

### **VIOLATIONS OF NPDES PERMIT CONDITIONS**

21. The allegations appearing in Paragraphs 1 through 20 above are realleged and incorporated herein by reference.

22. Alaska's Water Quality Standard for settleable solids, 18 AAC 70.020(b), disallows uses of marine water by seafood processors in a manner that causes a sludge, solid, or emulsion to be deposited beneath or upon the water, water surface, within the water column, on the bottom, or upon adjoining shorelines. The State's certification of the General Permit under Section 402 of the Act authorized covered facilities to deposit seafood processing wastes on the bottom of certain marine waters within a one-acre zone of deposit ("ZOD"). Section V.C.1.g of the General Permit prohibits discharges from violating Alaska Water Quality Standards for settleable solid residues beyond a one-acre zone of deposit. Beginning on an unknown date in May of 2000 and continuing through at least June 2002, Defendant discharged seafood processing wastes to Tongass Narrows through the Outfalls in excess of the one-acre zone of deposit standard for settleable solids, thereby violating Section V.C.1.g of the General Permit on as many as 61 days.

23. Section V.C.1.b of the General Permit requires that waste solids discharged from the end of pipe not exceed one-half inch in any dimension. On or about August 7, 2001, Defendant discharged seafood processing waste solids that exceeded one-half inch in at least one dimension to Tongass Narrows through the Outfalls, thereby violating Section V.C.1.b of the General Permit.

24. Section V.C.1.e of the General Permit prohibits the discharge of other wastewaters, including water used to transfer seafood to the facility, that contain foam, floating solids, grease or oily wastes which produce a sheen on the water surface. On July 11, 2000, Defendant discharged to Tongass Narrows other wastewaters that contained foam, floating solids, grease or oily wastes that

produced a sheen on the surface of the water in Tongass Narrows, thereby violating Section V.C.1.e of the General Permit.

25. Section VI.C of the General Permit requires that permittees conduct a seafloor monitoring program to determine compliance with the Alaska Water Quality Standards for settleable residues in marine waters. This seafloor monitoring program is to “determine the areal extent (in square feet) of the continuous deposit of sludge, solid or emulsion, any of which is one-half inch or thicker, on the bottom that persists throughout the year” and “the outer boundary of the area of the discharge waste pile.” Section VI.C of the General Permit requires Defendant to submit a report of the monitoring program, signed by one of its principal officers or a duly appointed representative, to the EPA and the Alaska Department of Environmental Conservation (“ADEC”) on or before January 31<sup>st</sup> of the year following the survey. Section VI.C of the General Permit also requires that this report describes the methods and results of the seafloor monitoring survey, including the required dimensions and area of the waste pile. Defendant failed to conduct seafloor monitoring surveys in years 1999 and 2000 that met the requirements of Section VI.C or, in the alternative, failed to submit reports of such surveys that met the requirements of Section VI.C, thereby violating the terms of the General Permit on January 31, 1999 and January 31, 2000.

26. Section VI.D of the General Permit requires that permittees conduct and submit a report of a sea surface and shoreline monitoring program to determine compliance with the Alaska Water Quality Standards for floating residues in marine waters. This sea surface and shoreline monitoring program is to “provide periodic assessments” and “record the incidence and occurrence and estimate the areal extent of contiguous films, sheens, or mats of foam within a three hundred (300) foot radius of the end of the outfall(s)....” Section VI.D.5 of the General Permit requires Defendant to submit a report of the monitoring program to the EPA and the ADEC on or before January 31<sup>st</sup> of the year

following the survey. Defendant failed to conduct sea surface and shoreline monitoring surveys in years 1998, 1999, 2000 and 2001 that met the requirements of Section VI.D or, in the alternative, failed to submit reports of such surveys that met the requirements of Section VI.D.5 of the General Permit by January 31<sup>st</sup> in years 1998, 1999, 2000 and 2001.

27. Section VI.B of the General Permit requires that permittees provide to the EPA and the ADEC a “complete, accurate and timely” annual report of the periods of noncompliance with any of the requirements of the General Permit during the previous calendar year by January 31<sup>st</sup> of the year following each year of operation and discharge under the General Permit. Defendant failed to submit in a timely manner an annual report for the operational year 2001, thereby violating Section VI.B of the General Permit on January 31, 2001.

28. Each of the violations identified above in Paragraphs 22 through 27 above constituted a failure by Defendant to comply with the terms and conditions of its General Permit, in violation of Section 301(a) of the Act, 33 U.S.C. § 1311(a). Pursuant to Section 309(d) of the Act, 33 U.S.C. § 1319(d), the Federal Civil Penalties Inflation Adjustment Act, as amended, 28 U.S.C.A. § 2461 note, and 40 C.F.R. Part 19, Defendant is liable for a civil penalty not to exceed \$27,500 per day per violation for each such violation that occurred after January 30, 1997. Section 309(b) of the Act, 33 U.S.C. § 1319(b), provides this court with jurisdiction to restrain such violations and to require compliance.

## **VII. PRAYER FOR RELIEF**

WHEREFORE, Plaintiff United States of America, prays that this Court:

A. Issue a permanent injunction restraining AGS from discharging pollutants into navigable waters from its Ketchikan Facility in Ketchikan, Alaska except in compliance with an applicable NPDES Permit.

B. Issue an injunction requiring AGS to:

1. conduct a seafloor monitoring survey accurately depicting the areal extent of the seafood processing waste piles within Tongass Narrows generated by its discharges from the Facility and submit that survey to the EPA; and

2. if the combined areal extent of the seafood processing waste piles within Tongass Narrows created by its discharges to Tongass Narrows is greater than one acre, undertake such measures as may be necessary to reduce, in a manner that does not violate the Clean Water Act or any applicable NPDES Permit, the areal extent of deposition to one acre or less; and refrain from any discharges to Tongass Narrows that will increase beyond one acre the areal extent of deposition of seafood processing wastes within Tongass Narrows emanating from the Ketchikan Facility.

D. Order AGS to pay a civil penalty of up to \$27,500 per day for each of its violations of the Clean Water Act (excluding violations that preceded the filing of this Complaint by five years or more).

E. Grant such other and further relief as may be just and proper and as the public interest and the equities of the case may require.

Respectfully submitted,

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